IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 406 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ARVINDBHAI DANABHAI MAKWANA

Versus

STATE OF GUJARAT

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Appearance:

MRS SHILPA J UNWALLA for Petitioner

MR BY MANKAD, APP for Respondent -State

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 29/11/2000

ORAL JUDGEMENT

Rule. Service of Rule is waived by Shri B.Y. Mankad, the learned APP for the revision opponent -State. With the request of both the parties, this Criminal Revision Application is taken up for final hearing to day itself.

2. The revision petitioner has, by filing this Criminal Revision Application under Sec.397 of the Criminal Procedure Code, 1973 (for short "the Cr.P.C.), challenged the correctness, legality and propriety of an order dt. 29th March, 2000 passed by the learned Judicial Magistrate, First Class, Vallabhipur, Dist. Bhavnagar below final report submitted under Sec.173 of Cr.P.C. in connection with CR.No. II 103/99 ( dt. 7th September, 1999) of Vallabhipur Police Station. Ms.S.J.Unwala, the learned advocate for the revision petitioner has vehemently argued that before granting " C " Summary, as prayed for by the Investigating Officer by the learned Judicial Magistrate, First Class, the complainant has not been heard, and therefore, the said order is illegal, improper and perverse. Looking to the impugned order, there is no reference with regard to any notice having been issued to the complainant or any opportunity of being heard having been given to the complainant. Thus an impugned order is illegal, improper and perverse, and same is required to be set aside.

3. In view of what is stated hereinabove, the impugned order dt. 29th March, 2000 passed below final report under Sec.173 of Cr.P.C. filed by the Investigating Officer in connection with CR.No. II 103/99 of Vallabhipur Police station is set aside. Still however, following directions are given to the learned J.M.F.C. Vallabhipur.

(1) The learned J.M.F.C. Vallabhipur is directed to pass appropriate judicial order below Final Report under Sec.173 Cr.P.C. afresh after affording full opportunity of being heard to the complainant.

(2) He is also directed to dispose of final report under Sec.173 of Cr.P.C. strictly on merits in accordance with law.

With the above directions, this Criminal Revision Application stands disposed of accordingly. Rule is made absolute to the aforesaid extent.

Date:29/11/2000. (H.H.MEHTA,J.)
ccshah